App. F. IX-4

1927 .28 ( )

File No. 266-27

Serial Nos. 1– 4

Previous References

Later References

General and Revenue Secretariat.

Serial Nos. 1– 4

Part B for Jany 29–

SUBJECT

Maintenance of Sentesha Darga, Police Road Bangalore City –

---

if the order directing the modification
is made that the members of the
establishment & respondent be
do to the duties of Mutthawalli
immediately.

R. S. APP F.III—1] 1927.

GENERAL AND REVENUE SECRETARIAT.

(Inzzai)

NOTES.

File No. 266/1927

FILE HEADING.

Mutwallishp of Sutesha Darga, Police Road, Bangalore city.

FROM

Salar Sab and Syed Mohideen.

~~No.~~ Petition Dated 14. 3. 28. Received

Diary No.	Enclos.	Spare copies	Serial No
1248			1

BRIEF ABSTRACT OF LETTER

Appeals against the M. O's order confirming the order of the Dy. Comr., Bangalore Dist., conferring upon the opponent the right to Mutwallishp in question for 2 years in succession.

NOTES AND ORDERS.

and prays for a Stay order pending disposal of the appeal petition.

P The petition is duly Stamped. The authenticated copy of the M O's order has been fd The appeal is in

General and Revenue Secretariat.

File No. 266 of 1927

Serial No.

SECRETARY
17 MAR. 1928

The Hon'ble Minister explains the facts of the case.

May a report with records be called for on the petition?

Orders should be passed on the application for a Stay order. It is said that a separate application for Stay order has also been filed but no such application has been received.

Submitted

My 17/3/28 No Stay order seems Rec'd. A report with records may be called for.

17.3.28

17/3/28

Fin: Sec:)

2nd member) 17.3.28

17/3/28

5397 21/3.

A- agree

21/3/28

NOTE—Contn. sheet. 21/3

21/3

WD 0324—GPB—60,000—24-5-27

App. F. III—2]

General and Revenue Secretariat. | File No. 266 of 192)

Serial No.

W. submits with Dem

W 11/3/28. 86 24-3-28

Dem

W.
26/3

2 Do. Mercr Coimr
No 1759 dt 31.3.28
forwards the petn for
report with records

Govt 3 MX 3. From, The Muzrai Comr
Letter no C 1318 dt 7 s 1928.
Submits the report with records
called for in the above.

Q The D C's order dt 19 9 27
confirmed in appeal by the Asst C
in his order dt 16.2 1928, explains
P The facts of the case.
It is reported that the
office of Muttavalli in question
is not hereditary, and a right
to transfer it under certain
conditions by gift is recognized
by Mahomedan law. It is
reported that Abu Sha (Suit
deceased), one of the hakdars
who had the right to a two
years turn in the Muzavarisha

NOTE—Contn sheet.

General and Revenue Secretariat.

File No.

Serial No.

P

transferred his right along with his other properties to his sister's son — The present resp and this transfer has been accepted by The both D[illegible] and Respondent. Against this order, Salar Sab and Syed Mohideen who enjoy one year's turn each, have appealed to Govt. The grounds for appeal are summarized in the petition.

May the appeal be posted for hearing, notice being given both to the apltz and the respdt?

Submitted for orders

16.6.28 16.6.28

The Legal Remembrancer may be consulted on the last point with under the Mahommedan Laws.

First Member 18/6

25 June 28

Leg Rem

my opinion is, I have never

[illegible]

18 JUNE 1923 No. 7364

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—13-4-23

20/6/28

O P I N I O N.

This is an appeal relating to the right of Muzavarship in Sutesha Durga in Bangalore City, which is a Muzrai Institution. The respondent claims a two year's turn in the Muzavarship under a registered deed dated 16th February 1909 executed by one Abusha, who admittedly had that right. The petitioners are each entitled to one year's turn and they in 1925 have begun to contest the right of the respondent to the office and having failed in all the lower courts have now approached the Government.

A/

It is clear that the Mahomedan law does not recognise any right of inheritance to the office of Mutwalli (1927 Cal 130 at 135) and it is nowhere stated to be the case of either parties in this litigation that the office of Muzawarshi of Sutesha Durga descends, by hereditary right either by law or usage. I do not see how under these circumstances, the Muzrai authorities have any jurisdiction to hear and decide the dispute now in question. Section 32 of the Muzrai Regulation of 1913 (corresponding to Section 32 of the Religious and charitable endowments Regulation of 1927) gives jurisdiction to the Amildar or such other revenue officer as the Muzrai Officer may direct, to enquire into the claims to the office of a Pujari or other hereditary servant of a Muzrai institution; and under Section 38 (Corresponding to Section 40 of the New Regulation) the jurisdiction of Civil Courts is ousted in all matters in which a Muzrai Officer has power to pass any order under the Regulation. And since this

office of Muzawarship is not hereditary either by law or usage, the Muzrai courts have no jurisdiction to enquire and decide the matters now in dispute which are wholly within the jurisdiction of the Civil Courts. As such I fear the whole proceedings have to be quashed as conducted without jurisdiction and the parties referred to a Civil Court.

On the merits of the case however my opinion is that Ex.D.3 dated 16th February 1909 cannot be construed as a will. It is styled as a settlement deed and purports to transfer the office of Muzavarship and the properties attached to it. It is clear law that the Mutwalli of a Mahomedan Wakf cannot during his life time transfer his office to another; much less sell it (37 Cal. 263). But in the absence of any provision in the deed of wakf or of any evidence of usage regarding the devolution of the office, the Mutwalli for the time being, may on his death bed nominate his successor; but such appointment cannot be made, if the founder is alive or if he has left an executor competent to make the appointment (19 Cal 203 at 219). The appointment of a successor by a Mutwalli can only be made while he is on his death bed or in death illness and in such a case he can appoint even a stranger as his successor in office and he is not bound to appoint a member of the family of the founder (9 C.W.N. 876).

A death illness or Maz-ul-mant as it is called is a malady which induces an apprehension of death in the person suffering from it and which eventually results in his death (31 Cal 319 affd. in 35 Cal. 271 P.C.).

Now Ex. D.3 does not mention any kind of immediate apprehension of death and there seems to be no evidence of such death-illness as would validate a transfer of Muzavarship. It is also significant that Abusha the executant of D.3 lived for a period of two years after the transfer and sometimes acted as the agent of the respondent.

It seems therefore clear that the respondent cannot claim any right to the office under Ex.D.3. But then the question arises whether he has not now got that right by prescription. Under Article 124 a suit for possession of an hereditary office is 12 years and for non-hereditary offices, it has been held that the six years period under Art. 120 of the Limitation Regulation applies. And it is settled law that if no suit is brought within the period fixed to oust the trespasser, he acquires an indefeasible right to hold the office, if he has been in adverse possession of it for the prescribed period (23 Mad 271 P.C., 19 Cal. 776, 26 Mad 113, 37, Cal. 263) 1927 Cal 130 at 135. The question whether the possesion is adverse or not is a mixed question of law and fact and as the parties do not seem to have concentrated their attention on this point, as there has been no issue raised & decided on this it is not easy to say in this case on the materials now available whether the respondent has perfected his title by lapse of time.

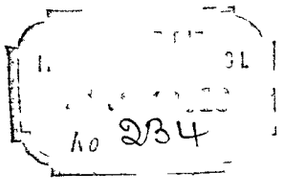
Legal Remembrancer.

General and Revenue Secretariat. | File No. of 192 .

Serial No.

In the circumstances the parties may be asked to settle their respective rights & this appeal in a Court of law and pending decision of this suit if any & reported by either party or on failure to file any suit the existing state of things may be continued.

First Member) 28/11/7.



The attention of the Legal Remembrancer is invited to Section 34 of Regn VII of 27. This office has been held by this family successively by three generations and does not fall within the jurisdiction of these officers & deal with the case — the opponent has performed the duties of the office as the nominee of both sides for over 12 years the appellants acquiescing in that arrangement during this period. In order the View held by all the Revn officers so far, correct in view of these facts (illegible)

WD 01714—GPB—30,000—18-4 28

Leg Rem) 28/11/7 W

General and Revenue Secretariat. File No. of 192 .

Serial No.

FINANCE
1-1
1928

13 AUG. 1928
No 1057

My opinion is placed below

8/8

For Secy
Both Comptrs'

1st Member)

90 May be posted to 25th
cash. 12 Nov
Mch
13 8 28

D/D. Notices Submitted

14 8 28

Appellants and their Counsel are present. The Respondent is not present. We are informed that notice has been received as to whether the notice was served on the latter or not. The case has therefore to be adjourned. The date on which it should be taken up can be fixed later on. May be posted with other cases in the list. Steps necessary to report regarding service or otherwise of notice has been received. Such reports or Affidavits of service must be received before dates of hearing of Cases.

NOTE—Contn. Sheet.

WD 01714—GPB—10,000—15-4-28

General and Revenue Secretariat. | File No. | of 192

Serial No.

Dft. Hukum calling for the Amr explanation in the matter

AV 25/8/28

WD 25/8

The notices with the Amiéars report were received late in the evening from the G. In Branch. As the respdt Rahmian Shariff Saheb had gone to Samarang, the notice could not be served upon him. Griers Solicitee re the adjd date of hearing of this case. It may be posted to the 15th Sept; Submitr. to which date another appea has been ordered to be posted

AV 27 8 28.

WD 27/8

AV

OFFICE OF THE FIRST CLERK HOIL 27 AUG. 1928 1379

Than with him have gone many the cases with the In being posted

WD 27/8

3 other cases to be posted for hearing.

Submitr AV 27/8/28

Parties present in person & were represented by Advocates case heard.

At the request of Mr. June was allowed to see if the case be compromised

Dft. notices Submitr.

AV 31/8/28

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4 28

General and Revenue Secretariat. Muzz. File No. 266 of 192 7.

Serial No.

1830/159

(1) Case heard on 15th September 1933 Petitioners were represented by Counsel Mr. D. Vasudeva Rao and the Counter-petitioner by Mr. Mir Iqual Hussain.

---

(1) The office of Mutwalli is not hereditary and neither ~~any of the~~ petitioners nor the counter-petitioner has any right to it. According to an old arrangement, however, approved by Muzrai Officers, the duties of the office have been permitted to be performed in rotation by the members of the family to which the petitioners and the counter-petitioner belong. The Counsel stated that the two petitioners and the counter-petitioner are the only claimants to the office and Mr. Vasudeva Rao suggested that if it was not possible to withdraw from Rahiman Sheriff the Counter Pet^r the right to ~~take~~ worship in two out of three years, at least the right of worship in one year may be taken away from him and given to the second petitioner. According to this arrangement, the three members of the family would each have one year of Mutwalliship in rotation The Counsel for the counter-petitioner stated that he would consult his client and see if a compromise on the line suggested could be arrived at. His ~~report~~ representation may be awaited.

NOTE—Contn. Sheet

WD 01714—GPB —30,000—18 4 28

D/1879/33

General and Revenue Secretariat.

File No. , 266 of 1927.

Serial No.

Petition from Rahiman Sheriff stating that though his term of office commenced from 1-7-28, he was not given charge by the apptt and praying that the income accruing in the respective "Baris" be given to the respective holders is placed on the file.

65 If no further representation is received from the parties before the 1st proximo, the file will be re-submitted for orders.

12.10.28.

12/10/28

Magroom.

12/10/28

aited upon the Members Committee in this case)

H. 13 OCT. 1928 No. 2429

15/10

66 No further representation has been received till now. The file is re-submitted for orders. If no order may 8-11-28. pass in accordance with the Members Minute dt 15/10/28.

9/11/28

OFFICE OF THE FISHERIES ... GOVT. OF TUTICORIN 6 NOV. 1928 2892

10/11

(10th Member)

68 We may ask the lawyers to make their reports according to the promise made by them

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat.

File No. 266 of 1927.

Serial No.

U7
DS Submitd.
AN 15-11-27

WD
14/11

DS (Card) & Copy. Action (a)

Letter dt 14th Nov 1928 from advocate Mr D. Varadarajulu stating that his clients (the petitioners) were not able to effect any compromise with the counterpetitioner

Application dated 5-12-28 from Rehman sheriff the counterpetitioner stating that he was not able to come to any terms with the petitioners.

Submitted for orders. The counterpetitioners advocate Mr. Nair Signal Honourable has not sent any reply. The Application dt 7/12/28 presented by Mr Rehman sheriff has been sent by Mr Signal Honourable.

Orders may perhaps be issued in accordance with the Minute dt 15/5/28.

for Member
28
8/12

2 Appl. Orders accordingly may now issue
WD

8 DEC. 1928
No. 3514

774
10.12.28

NOTE—Contn. Sheet.

53) AM 11/12
WD 11/12

WD 01714—GPB—30,000—18-4 28

Serial No.

Dft order Submitr
AV
7.1.29
MM 7.1.29 (for Member) 8/1/29
8/1/29

B
8/1

4 To. Mucr Cantt
Memo No 136 / 21
forwards copy of the order duly modification of M's order that the men of the families of applts & Respdts be allowed 6 lbs of Mutton weekly by annual Ration

B
MM
1/8/B

CIL
8 JAN 1928
No. 4080

NOTE—Contn. sheet

O P I N I O N.

I have once again gone through this case carefully and I do not see any grounds to revise my former opinion. Section 32 of Regulation VII of 1927 gives jurisdiction to Muzrai Courts only if the office is by law or usage descends by hereditary right. The Mahomedan law on the point is clear and it is "strongly opposed to the attaching of any right of inheritance to the administration of the waqf property." (See Tyabji's Mahomedan Law page 612). It is by appointment that one officer succeeds to another, appointment either by the original appropriator or by his successor or executor or by the Superintendent for the time being or failing all these by the ruling power. (See Abdulla v Syad Zain 13 Bom. 555 at 561). The rule on the subject is thus stated by Neil Baillie in his Treatise on Mahomedan Law Vol.I page 593: "When the Superintendent has died and the appropriator is still alive, the appointment of another belongs to him and not to the Judge; and if the appropriator be dead his executor is preferred to the Judge. But if he has died without naming an executor, the appointment of an administrator is with Judge." In the Asl it is stated that the Judge cannot appoint a stranger to the office of administrator so long as there are any of the house of the appropriator fit for the office, and if he should not find a fit person among them, and should nominate a stranger, but should subsequently find one who is qualified, he ought to transfer the appointment to him. It is obvious from the statement of the law that though a descendant of the founder has a preferential claim to the office of Mutwalli, he does not become

one by right of inheritance but has to be appointed such by the "Qadi" who may supersede him if he is not qualified. (Atiannessa Bibi v Abdul Sobhan 43 Cal. 467 at 473). It is thus clear that the office of a mutwalli does not descend by hereditary right under the Mahomedan law.

Next as to the question whether it does so by usage. In this connection Section 64 of Regulation VII of 1927 is pertinent. It enacts that "No office or service in a Muzrai Institution shall be deemed to descend by hereditary right unless it has been conferred or recognised originally with an express stipulation to that effect in writing by a competent authority or has been held successively by three generations of the same family in succession in due legal course." It is doubtful whether the section can apply to Mahomedan waqfs when by the personal law of Mahomedans, it is clear that it is by appointment that one officer succeeds to another and not by any hereditary right. Even if it does, one cannot claim the office of Mutwalli by hereditary right on the mere ground that there have been three successive mutwallis of the same family. As Mr. Justice Tyabji has pointed out in Phatmabi v Abdulla Musa Sait (21 Indian cases 964 at 965) "it is quite in accordance with common knowledge that on the death of a person holding an office of such a character as the mutwalliship of a waqf, his descendants or relations should slide into the office without any one being concerned to question their right to do so and without any pretence on the part of the new office-holder that his succession is in accordance with the terms of the original waqfnama or the expressed or implied desires of the waqf. On such successive acts of usurpation, it is easy to find a claim that the office is hereditary, a claim

a claim which however difficult it may be to resist in court, may be quite opposed to the real intentions of the waqf." It is therefore that Section 34 of Regulation VII of 1927 requires that the holding of the office by the three generations successively of the same family must be in due legal course i.e., by right of inheritance and not by appointment. In Sayad Abdulla v Syed Zain (13 Bom. 555) though the holding of the office in the same family for over 200 years was proved, the learned Judges observe "In many cases, there is direct evidence that the successor was appointed by his predecessor. The very fact that an appointment was made at all shows that there could have been no right of succession" (13 Bom. at 562). Again in Phatna Bi v Abdulla (38 Mad 491) Tyabji J. observes "the facts on which the plaintiff relies, namely, that there have been from sometime previous to 1874, three successive mutwallis from the family to which the plaintiff belongs seems to me to be totally insufficient for supporting the allegation that in accordance with the terms of the original dedication, the mutwalliship of the waqf ought to devolve hereditarily. It may be conceded that they were rightful holders of the office, and yet there is nothing to show that they proposed to succeed to the office not through some appointment or nomination, but as of right" Sadasiva Iyer J. who concurred with Tyabji J observes "a claim to succeed by hereditary right to a trustee's office or to a religious office or to any other office should be looked upon with strong disfavour by courts whether the office was created by a Hindu or a Mahomedan or an adherent of any other creed. The holding of any

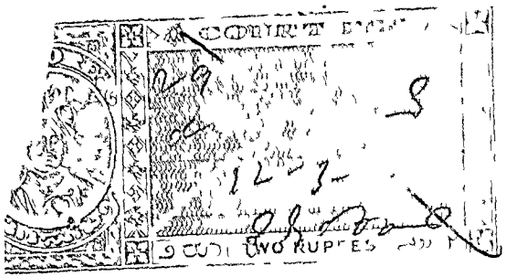
office should depend upon necessary qualifications, and while ~~xxxxxxxxx~~ heredity might raise a feeble presumption of fitness to be considered by Court in arriving at a decision on the question of the successorship to the office, it should not be raised to the dignity of a principle which creates a right of succession to any office, unless the terms of the original foundation of the office constrain the courts to treat heredity as the factor to be considered in deciding on the right to the office or unless there has been such a precise and uniform course of descent (by heredity almost irrespective of any consideration as to the personal fitness for the office) as to raise an irresistable inference as to the intention of the original creator of the office."

In the present case, it is seen from the order of the Deputy Commissioner that in 1894, the Amildar of Bangalore as a Muzrai Court appointed Abusha, Dadu Sab, Mahomed Sha and Sutesha as Muzavars. These persons consequently did not get the office by hereditary right. Now Abusha alienated the office by means of the deed Exhibit D.3 to the respondent who is a stranger to the family. The 1st appellant is the son of Dadu Sab. The 2nd appellant is the Sister's son of Abdul Majid who is the son of Sutesha. It is thus clear that this office has not been held successively by three generations of the same family in succession by right of inheritance.

I am therefore of opinion that the office has not been proved to descend by hereditary right either by law or usage and that consequently the Muzrai courts had no jurisdiction to entertain this dispute. The respondent has nothing to suffer from setting aside all the proceedings, since his possession of the office will not in any way be disturbed. The appellants will have then to go to a Civil Court

to claim the office from the respondent and he will be able to succeed if he can show adverse possession for over twelve years.

Legal Remembrancer.
8 8 1928.



15

D1248

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Muzrai Revn.Petn. No. 11 of 1926-27.

Petitioners.	Vs.	Opponent.
Salar Sab, Son of Dadu Mia, 50 years, Mohamadan, Merchant, living in Sutesha Darga, Police Road, Bangalore City. 2. Syed Mohideen, Son of Syed Makdum, aged about 40 years, do. do.		Rehima Sheriff, Son of Tippu Sab, aged about 60 years, Bangalore City.

****

The petitioners above-named beg to file this Revision ~~appeal~~ Petn against the order of the learned Muzrai Commissioner confirming the order of the Deputy Commissioner, Bangalore District conferring upon the opponent the right to Mutwallship for two years in succession.

3M9, A

The facts of the case are briefly as follows:-

1. That the 1st petitioner is the son of one Dadumia. The right to worship and perform all needful acts in the management of Sutesha Darga, Bangalore City was originally vested in one Syed Malik Saib founder of the family. He had ~~tow~~ two sons Syed Yakub and Syed Masjid. The father of the 1st petitioner Dadumia is the son of Budan Sab, who himself is the son of Syed Masjid above referred to. This Dadumia had two other sons who are not living now, so that the 1st petitioner is the only one of Dadumia. The geneological tree is given in the Schedule.

2. The 2nd petitioner is the elder sister's son of Abdul Majid, son of Sutesha, the protector of the right. The Sutesha was the son of Syed Masjid above referred to. Abdul Majid above mentioned has a son Syed Hussain whose whereabouts are not known. This Abdul Majid himself is laid up with paralytic fits and is unable to move about and much less perform the mutwalli and other functions appertaining to the Durga. The result is that the 2nd petitioner is the Hakdar on behalf of the family of Sutesha's It is also seen from the genealogical tree that there is one Abbusha who died after his brother Mohamed Sha without leaving any issue. Nor did Mohamed Sha leave any issues behind. The result is there is no one to represent the branch of the family last represented bythe late Abbu Sha, except the petitioners.

3. The Hakdars are represented by the family of (1) Abbu Sha (2) Dadu Mia (3) Abdul Majid, each performing the function byturn of 1 year so that the same man gets the chance once in 3 years.

4. It is therefore seen that Rahiman Sheriff has no manner of title to the function of Muzavari or any other function connected with the Daraga.

5. That the learned Muzrai Commissioner ought to have allowed the appeal holding that the Deputy Commissioner was wrong in accepting Ex.D.3 the so-called will, as being a document conferring any title in law on the appellant, for the office under contest. The reason is that

that the will Ex.D3 which purports to be one made by the deceased Abbu Shah in favour of the opponent is not produced in original. The absence of the original is not satisfactorily accounted for and under the Evidence Act, the certified copy that has now been produced, is that admissible at all, in absence of any satisfactory reason, being given for the non-production of the original. The petitioners do not know about the will nor do they admit the genuineness thereof.

6. Again even after the execution of Ex.D3 the opponent's case is, that the deceased acted as an agent of the opponent in the year 1911-12. This clearly shows that by subsequent conduct the testator has revoked the will.

7. That there is no manner of right vested in deceased Abbu Shah, to devise the office in favour of sister's son opponent as the Inam is a service Inam, especially during the life time of Pattedars son Abdul Masjid.

8. That the fact of such a devise was not even informed to the Government as he ought to have done.

9. That the Durga being a Muzrai institution with a grant of Rs.1-2-3 per month which the opponent has never received but which the petitioners have been receiving.

10. That the Sannads copper plates, etc., relating to the conferring of the office on the petitioners are in possession of the petitioners and the opponent is not a member of the family of the founder at all.

11. That the opponent never actually

actually acted in the office but all he only got it done through others.

12. That the other exhibits on behalf of the opponent are orders passed exparte without the knowledge of the petitioners.

13. That the reasons given by the Lower Court are not at all satisfactory.

14. That no opportunity to examine witnesses has been given by the Amildar.

15. That the learned Muzrai Commissioner has not discussed the law on the point and the petitioner submits that his order is entirely against law.

16. Wherefore the petitioners pray that this Hon'ble Court may be pleased to set aside the order of the Lower Court and declare that the opponent has no manner of title whatsoever to the office in question.

17. That the petitioners further submits that pending the disposal of this revision petition an ad-interim stay order may be passed, prohibiting the opponent from withdrawing the amount of rent of houses, belonging to Durga in question, from the Taluk Office where it has been held in deposit and also from taking possession of the shop.

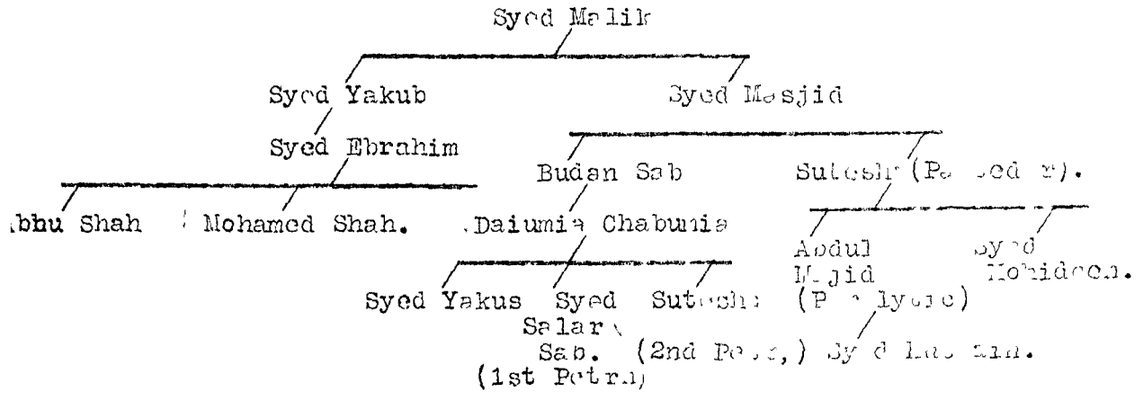
D Vasudeva Rao
Advocate for petitioners

A separate application for stay order has also been filed.

Bangalore,
D/14-3-28.

Petitioners.

Genealogical tree.



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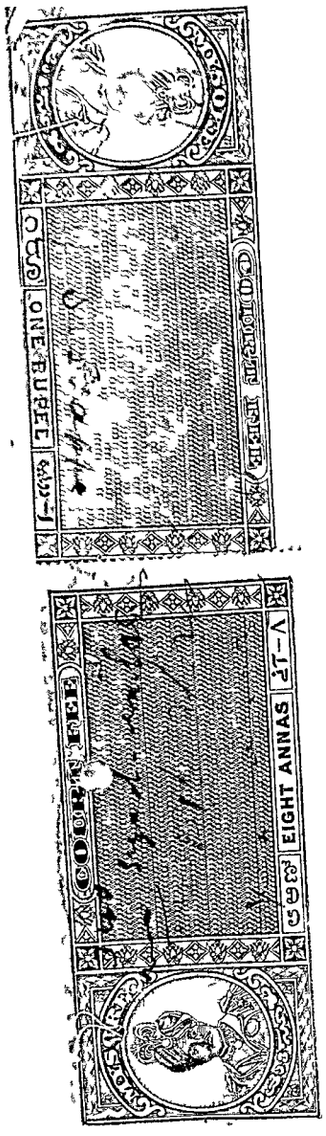
سید علی ابن

L.T. Marwadi
Devanagari

Order of the Muzrai Com
in Mysore



Subject: Appeal (No 11 of 1921-26), of Salar Sab and Syed Mohideen living in Sulesha Durga Police Road Bangalore city, against the order of the Deputy Commissioner Bangalore District (confirming the order of the Sub Division Officer Bangalore Sub-Division: allowing the Respondent Rahiman Sheriff Son of Tippu Sab the right to the Muzavarship of the Sulesha Makkan successively for a period of two years

Appeleants:-

1. Salar Sab son of Dadu Mia aged 50 years living in Sulesa Darga, Police Road Bangalore

2. Syed Mohadin son of Syed Makdum aged about 40 years residing at the above place

Respondent:-

Rahiman Sheriff Son of Tippu Sab aged about 60 years Bangalore city

Facts of the Case

Sutesha Darga in Bangalore city is a Muzrai institution enjoying a cash grant of Rs 14-6 0 per annum. The present dispute is about the right of each party to the Muzavarship in the Darga by turns. According to an order of 23rd February 1894 of the Bangalore Taluk and the * marginally noted four persons. were recognised as entitled to the office by turns of a year each.

* 1. Abu Sha son of Syed Ibrahim
2. Dadu Sab son of Budan Sab
3 Mahomed Sha son of Syed Ibrahim
4 Sutesha son of Syed Masjid.

The Ist and 3rd were brothers. No 2 is their cousin brother while the 4th is an uncle being the brother of Dadu Sab's father and cousin of Syed Ibrahim father of 1 and 3 On the death of the 2nd 3rd and 4th a Mutchalika was executed by their descendants Syed Salar Sab and Abdul Masjid Sab on 7-11-1903. in the presence of the Bangalore Taluk and agreeing to allow the Survivor Abu Sha a two years turn in the Muzavarship, they themselves taking each a year's turn

In 1909 Abu Sha Who had no issues and was

incapacitated on account of old age
from discharging his duties
transferred his right of Muzavarship
along with his other properties to
his nephew (sister's son) the respondent
by a duly registered deed of gift
dated 16th February 1909. In 1925
the appellants approached the
Amildar with a petition contesting
the right of the respondent to have
any manner of title to the Muzavar-
ship, according to the genealogical tree
Abbu Sha having died issueless
and his brother Mahomed Sha
having predeceased him and
consequently the right having
descended to them as Hukdars.
The Amildar enquired into the
matter in detail hearing both
the parties and their witnesses
and admitting the documentary
evidence produced by each and
the records went up before the
Sub-Division Officer who after
hearing arguments on both side,
directed in his order dated 24-8-1926
that the opinion of the Amildar
that Counter petitioner Rahiman
Sheriff be allowed the right to
offer worship for 2 years at a
time and the petitioners one year

each because the conduct of the petitioners warrants it is upheld by him. This order was appealed against and the Deputy Commissioner in his order of 19-9-1927 dismissed the appeal and confirmed the order of the Sub-Division Officer. The present appeal is against this order. The appellants and respondent with their respective Counsel were heard on 2-2-28.

Order No. R. Dis 87 of 27-28. dated 16-2-1928.

In the exhaustive order passed by the Deputy Commissioner in the case he has pointed out fully both the facts and the grounds of law on which the appellants' contentions have to be overruled. According to Mahomedan law, the office of Mutavalli is not hereditary and a right to transfer it under certain conditions by gift is recognised. Much was made of the fact that the gift was not made on the

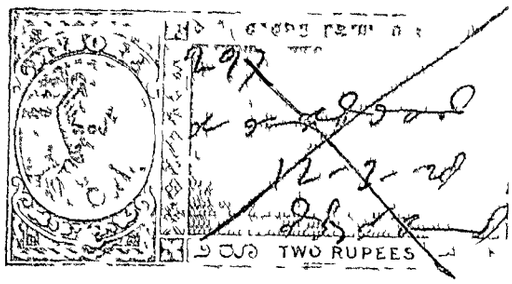
death bed and that the
originall will was not produced
The Deputy Commissioner has
explained the reason why the
transfer may be accepted
though the donor survived it
for some years and as regards
the latter there is no real
dispute that a testamentalary
disposition has been made
The appeal is therefore

(Sgnd) P.G. Sinnya
Judicial Commissioner

Copy applied for 21-2-28
Copy ready 21-2-28
Copy delivered 23-2-28
No of Words 819
Copying fees 1-2-0
Comparing fees 0-4-6
Compared by
Mr. Subramaniam

Copy

Rathnayake
for Jud. Com



Bellaire ... ಕೋರ್ಟಿಗೆ.

1927 ನೇ ... ಸಂಬರು

ವಾದಿಯೂ ಅರ್ಜಿದಾರ್. ಪ್ರತಿವಾದಿ ಯೂ ಅಪೊಂನೆಂಟ್

ಸಾಲಾದಾಯಂ

V. S.

ಮು|| ರಾ||

... ಬರಸಿಕೊಟ್ಟ ವಕಾಲತ್‌ನಾಮ

ಈ ಮೊಕದ್ದಮೆಯಲ್ಲಿ ತಾವು ನನ್ನ ನರವಾಗಿ ಆಜೈರುವಂತಿಗೂ ಕೊಂಟ-ನಲ್ಲಿ ವಿವಾದ ಜರುಗಿಸುವುದಕ್ಕೂ, ನನ್ನ ಪರ ಆಗುವ ಎಲ್ಲಾ ವಿಧವಾದ ಆರ್ಡರನ್ನೂ, ಡಿಕ್ರಿಯನ್ನೂ ಜಾರಿಕ್ರಮ ನಡೆಸಿ ಹಣ ವಸೂಲುಮಾಡಿಕೊಳ್ಳುವುದಕ್ಕೂ, ನನಗೆ ಕೋರ್ಟ್‌ನಿಂದ ಸಲ್ಲಬೇಕಾಗಿರುವ ಡಿಕ್ರಿ ಮೂಲಗೂ, ಖರ್ಚು ಮೊಬಲಗು ಸಹ ವಡೆಯಲಿಕ್ಕೂ, ದಸ್ತಾವಜು ವಗೈರ ಗಳನ್ನು ವಾಪಸು ಪಡೆಯಲಿಕ್ಕೂ ಸಹ ತಮಗೆ ಈ ಮೂಲಕ ನಂಪೂರ್ಣ ಅಧಿಕಾರ ಕೊಟ್ಟಿದ್ದೇನೆ ಅಲ್ಲದೆ ತಾವಾಗಲಿ ಯಾ ತಮಗೋಸ್ಕರ ಮತ್ತಾವ ಲಾಯರಾಗಲಿ ಡಿಟೋ ಮೊಕದ್ದಮೆಯಲ್ಲಿ ನಡೆಸುವ ಎಲ್ಲಾ ಕೆಲಸಗಳನ್ನು ನಾನು ಖುದ್ದು ನಡೆಸಿದಂತೆ ಒಪ್ಪಿಕೊಳ್ಳಲು ಬದ್ಧನಾಗಿ ಇದೇನೆ.

ತಾರೀಖು 15/3/28 } ರುಜು

ಈ ಮೊಖ್ತ್ಯಾರ್ದುನಾಮಾ ಕೊಟ್ಟವರು ನನಗೆ ಪರಿಚಯಸ್ಥರಾಗಿ ಸಮಕ್ಷಮ ರುಜುಮಾಡಿರುತ್ತಾರೆ.

ಈ ಮೊಖ್ತ್ಯಾರುನಾಮಾ ಅಂಗೀಕರಿಸಿ ಇದೆ

D Vasudeva Rao

☞ ಸಿಕ್ಕುವಸ್ಥಳ.—ಬೆಂಗಳೂರು ಚಿಕ್ಕಪೇಟೆ, "ವಿದ್ಯಾವಿಲಾಸ ಬುಕ್‌ಡಿಪೊ"' ಯವರಲಿ ದೊರಯುತ್ತೆ

A. P. F. VI. Gl]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section

File No

Serial No.

No. 1759

General and Revenue Secretariat

( )

the 192

To The Asst Comr

Date of issue 31/3/28

Signed by M. K. Sreeharaya Iyer

Sir,

I am directed to forward herewith for report his records petition no 1248 from Salar Sabe and Syed Mohideen appealing against your Order Confirming the order of the Dy. Comr, Bangalore Dist, Confirming upon the appellants Rahimans Sheriff - The right to maintain

over

for this please see t -

List of enclosures.....

Copied by .....

Examined by .....

WD0326—GPB—30,000—26 5-27

of Sutesha Durga, Police
Road, Bangalore city

I have etc

WB 24/3
for Dist. Secy.

24.3.28

Secy 1760 of 31-3-28.

With reference to their appeal
Petn of 14-3-28 appealing against
the order of the Mun Commr in
Mgm regarding the Mutwallship
of the Sutesha Makkan at
Bangalore, the Petrs Salar Sab
& Syed Mohideen Sutesha Durga,
Police Road, Bangalore are informed
that no stay order can be given
is necessary
but that a report with Commr records
has been called for from the
Mun Commr.

By order

WB 25/3
for Secy

Bgl 24-3-28

C.131

FIN.

7 MAY 1928

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore....5th...May.....192

Exped to Eulos + 2 Fits

8

8

FROM

P. G. D'Souza Esq. B.A., B.L.
The Muzrai Commissioner in Mysore.

D 1523

To

P. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

~~Sir~~,

SIR,

With reference to your letter No.1759/Muz.266-27-2 dated 31st March 1928 forwarding for report with records petition from Jalar Sab and Syed Mohideen appealing against this office order confirming the Bangalore District Deputy Commissioner's order conferring upon the ~~Opponent~~ Rahiman Sheriff the right to mutavallishp for two years in succession, of Sutesha Darga, Police Road Bangalore City, I have the honor to submit herewith the entire file of vernacular records received with the Deputy Commissioner's letter No.C.3-4265 of 27-28 dated 3rd May 1928.

This office file No. R.Dis.87 of 27-28 dated 16th February 1928 containing the office order appealed against, the preamble of which gives the facts of the case is also enclosed for reference and kind return.

The appeal petition together with its enclosures received with your letter under reference is also herewith retransmitted.

I have the honor to be,

S i r,

Your most obedient servant

for Muzrai Commissioner.
(Assistant Commissioner)
(Absent from Station)

9 OCT. 1928
No. M. 130

Mur. Mus 9-10-28 h

571

Before the Government of His Highness
the Maharaja of Mysore.
Bangalore

Muzrai Appeal No. of 28 by

Appellants	Respondent
1 Salar Sab.	Rahiman Sherif.
2 Syed Mohasin	Manager of Sutetha
Both living in Sutetha-	darga. police Road
darga. Bangalore City.	Bangalore City.

Memo filed by Respondent.

The respondent abovenamed begs to State as follows:—

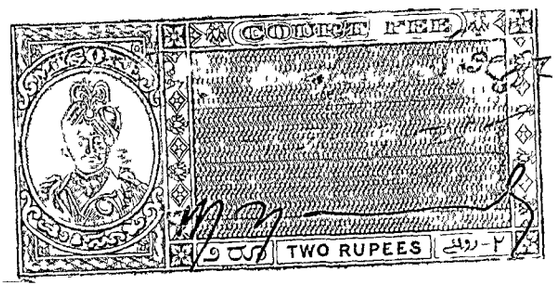
1 That though the Bari of this respondent has commenced from 1-7-28, he is not yet given its charge by the Appellants.

2. That the respondent prays that the income accrued in the respective Baris should be given to the respective holders of the Bari.

Bangalore.
9.10.28.

I the Respondent do hereby declare that what is Stated above is true to the best of my knowledge and belief

Bangalore
9.10.28



In the Court of

No. **of 192 8–192**

~~Plaintiff—Petitioner~~ Appellant } **Vs.** { *Defendant—Opponent~~—~~ Respondent*

1) Salar Sab
2) Syed Mohadin

Rahiman Sheriff

VAKALATNAMA

executed by the Respondent- in favour of MR. MIR IQBAL HUSAIN, B.A., B.L., Advocate.

$\frac{I}{We}$ hereby empower the said advocate, in person or by proxy, on $\frac{my}{our}$ behalf, to appear in, and conduct the above case, as well as any proceedings arising out of and connected with the same, either during its progress or after its decision, to execute any decree that may be passed therein in $\frac{my}{our}$ favour to withdraw, compromise or refer to arbitration the said suit and to do all such acts as may be proper and necessary for the due conduct thereof, including the signing, and presentation in Court, of the necessary petitions and papers.

And $\frac{I}{We}$ further authorize the said advocate to receive and give receipts for, any money, document, or other moveable property, that is, or may become, payable to $\frac{me}{us}$ in the course of the said case or proceedings

15-9 1928.

I know the executant who has signed before me.

Accepted.

Mir Iqbal Husain
Advocate.

The Power Printing Works, Chickpet, Bangalore City

SUBJECT.....

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to.....

No.

General and Revenue Secretariat

( )

the *192*

To .....

Date of issue 9/11/28

Signed by.....

(i) Mr D. Vasudeva Rao,
Advr for appts Salar Sab
and Syed Mohadin.

(ii) Mr Mir Iqbal Hussain
Advr for respt Rahiman
Sheriff.

With Ref to Your Appeal case no 17 1928-9 Re The Right to Mutwallishup of Sudesha Darga, Police Road, Bangalore city, - - - - - is requested to make his report without further delay according to the promise made by him during the hearing of the case before Court on 15th Sepbr 1928. as the Compromise effected in regard to the performance of the duty by all the 3 persons in over

List of enclosures.....

Copied by .....

Examined by .....

Bo. 15/11 Secty.

WDO 325—GPB—30,000—26 5-27

15/11/28

D. VASUDEVA RAO, B.A., B.L.
ADVOCATE

ಡಿ. ವಾಸುದೇವರಾವ್, ಬಿ.ಎ., ಬಿ.ಎಲ್.
ಅಡ್ವೊಕೇಟ್

BANGALORE CITY

19th November 1928

21

D 774

To

The Chief Secretary
to The Government of His Highness
the Maharaja of Mysore, Bangalore.

REFERENCE:- Endorsement No.922 dated 17th November 1928 regarding ~~Muzarai. 266-27. Abdul Hag~~ the effecting of a compromise between the parties in Muzarai Appeal 1/28-29.

---:0:---

Sir,

I am in receipt of your above esteemd endorsement and in reply I am instructed to state by my clients that as the Respondents do not seem to be earnest about effecting a compromise in the matter, the same may be disposed of in a menner which seems just and proper to the Government and my clients are agreeable to accept the decision of the Government unconditionally.

D. Vasudeva Rao
Advocate,
For Appellants.

Bangalore.
Dated 19th November 1928.

Filed

8 83

Before the Government of his Highness the Maharaja of Mysore, Bangalore

Misc App No of 28-29

Appellants

1. Syed Salar
2 Syed Mohdeen.

vs

Respondant

Rehman Sheriff

1 The Respondant above named begs to state that he has already placed his submission in a written memo before the Government

2. That the Appellants have not come to any Compromise with the Respondant even though the Respondant tried his very best to amicably settle the matter according to the wish expressed by the Government, as the former are jubilant that they have got what they desired — viz two baris in spite of the concurrent findings of all the lower Courts in favour of the Respondant.

3. That the Respondant leaves the

decision in the hands of Government
Confidant in the hope that justice
will be done to him.

Bangalore
5th Dec 28

Yours faithfully

(G)

Before the Government of His Highness the Maharaja of Mysore.

Misc Appeal No. 1 of 1928 9

Appellants	Vs	Respondent
(1) Salar Sab, and (2) Syed Mohideen		Rahuman Sheriff

Subject.

Appeal against the ord
order confirming the order of
The D.C, Bangalore, conferring
upon the opponent the
right to Muslim sub
of Sudesha Darga in Pha
Road, Bangalore city, for
2 years in succession

Decision

The case was finally
heard on 15 — 9 — 1928.
The apllts were represented
by Mr. D Vasudeva Rao
while the respt by
Mr Mirza Ishaq & Ssan

GPB—1,000—8-8-11

office of Mutwalli is not
vacant, and neither the
plff nor the respt
has any right to it
According to an old arrangement,
the duties of the office have
been permitted to be performed
in rotation by the members
of the family to which
the parties belong. The
Counsel for the Wakf Board
Statés, that the
2 apllt and the respt
are the only ~~claimants~~ Muslim
to the office and in
Vandeven Bow suggested
that if it was not
possible to withdraw
from Rahiman Sheriff
the respt) the right to
worship in two out of
3 years, at least the
right of worship in one ear

may be taken away from him and given. The 2nd appt. the Counsel for the Respt. stated that he would consult his client and see if a compromise on the line suggested could be arrived at. From the further representations since received, it is seen that the parties are not prepared to compromise ~~on the matter~~ on those matters.

On a consideration of all the facts connected with this case, facts it is decided ~~to be pleaded to decide~~ that the three members of the family may each hold the Membership one year ~~of Institution~~ in rotation. The M.P.S. under appt. again

GPS—12,000—15-2-13.

be modified accordingly.

Memo

Copy to me;
with the records received
with his letter no. C. 1318 dt
7th May 1928

B.O.

Government of his Highness the Maharaja of Mysore.

FINANCIAL DEPARTMENT.

G. O. No. 1360—Muz. 266-27-4, dated 21st January 1929.

Sutesha Darga.

Directs that the Mutvalliship of the —— in Bangalore should be held by the three members of the family each one year in rotation.

Before the Government of His Highness the Maharaja of Mysore.

APPEAL No. 1 OF 1928-29.

Appellants.	*Vs.*	*Respondent.*
(1) Salar Sab. (2) Syed Mohideen.		Rahimon Sheriff.

SUBJECT.

Appeal against the Muzrai Commissioner's order confirming the order of the Deputy Commissioner, Bangalore, conferring upon the opponent the right to Mutvalliship of Sutesha Darga in Police Road, Bangalore City, for two years in succession.

DECISION.

The case was finally heard on 15th September 1928. The appellants were represented by Mr. D. Vasudeva Rao and the Respondent by Mr. Mir Iqbal Hussain. The Office of Mutvalli is not hereditary and neither the appellants nor the respondent has any right to it. According to an old arrangement, the duties of the Office have been permitted to be performed in rotation by the members of the family to which the parties belong. It was stated during the hearing that the two appellants and the respondent are the only applicants to the Office and Mr. Vasudeva Rao suggested that if it was not possible to withdraw from Rahimon Sheriff (the respondent) the right to worship in two out of three years, at the least the right of worship in one year may be taken away from him and given to the second appellant. The Counsel for the respondent stated that he would consult his client and see if a compromise on the line suggested could be arrived at. From the further representations since received, it is seen that the parties are not prepared to agree to a compromise on these lines.

On a consideration of all the facts connected with this case. it is directed that the three members of the family may each hold the Mutvalliship for one year in rotation. The Muzrai Commissioner's order appealed against will be modified accordingly.

MEMO No. 1360—MUZ. 266-27-4, DATED 21ST JANUARY 1929.

Copy of the above is forwarded with compliments to the Muzrai Commissioner in Mysore, with the records received with his letter No. C. 1318, dated 7th May 1928.

By Order,
B. SRINIVASA IYENGAR,
Secretary to Government,
Financial Department.

Exd —P. S. R. N.

WD 2073—GPB—325—5-2 29